

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MICHAEL D. JACKSON)	
)	
Plaintiff,)	
)	
v.)	Case No.: 1:06 CV 00001- MHT
)	
MGA, INC. d/b/a MOVIE)	
GALLERY U.S., LLC)	
)	
Defendant.)	

AFFIDAVIT OF PHILLIP KITCHENS

STATE OF ALABAMA)
)
COUNTY OF HOUSTON)

1. My name is Phillip Kitchens. I am over the age of twenty-one (21) years and I have personal knowledge of the matters contained herein. I swear under the penalty of perjury that the matters contained herein are true and correct.

2. I am employed as Senior Vice President – Loss Prevention-- Collections – Quality Assurance at Movie Gallery US, LLC.

3. In April 2005, Joe Malugen directed me to review all corporate employees' evaluations and identify any employees who scored lower than their peers for termination.

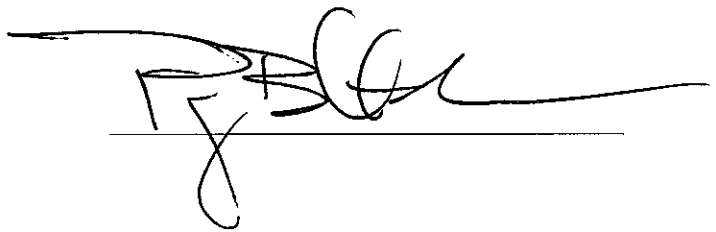
4. I identified a total of twelve employees, including Jackson, as employees who would be terminated on April 15, 2005. Of these twelve employees, only two, including Jackson, were African American.

5. Jackson and a white female tied in having the lowest performance score of all those identified for termination. One white female and two white males who were terminated had performance review scores of 3 or higher, significantly higher than Jackson's score of 2.6

6. Four of these employees were terminated or resigned prior to April 15, 2005. As a result, eight employees, including Jackson, were terminated on April 15, 2005.

7. All eight of these employees were given the choice of resigning with three weeks severance pay or being terminated. Jackson alone declined the offer and filed an EEOC charge alleging race discrimination.

FURTHER THE AFFIANT SAYETH NOT.

A handwritten signature in black ink, appearing to be "R. B. C.", written over a horizontal line.

Sworn to and subscribed before me
on this the 1 day of August 2006.

[NOTARY SEAL]

Martha F. Compton
Notary Public
My Commission Expires: 7/30/09